

DEC 18 2003

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

LOUIS ALAN WILLIAMS,

Petitioner - Appellant,

v.

ROBERT J. HERNANDEZ, Warden;**
ATTORNEY GENERAL OF THE STATE
OF CALIFORNIA,

Respondents - Appellees.

No. 02-55972

D.C. No. CV-99-10193-MRP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Mariana R. Pfaelzer, District Judge, Presiding

Submitted December 3, 2003***
Pasadena, California

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** Robert J. Hernandez, Warden, is substituted as a party for Chuck Cottier, Warden. See Fed. R. App. P. 43(c)(2).

*** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Before: **BEEZER** and **KOZINSKI**, Circuit Judges, and **SCHWARZER**,
Senior District Judge.****

Williams has failed to rebut by clear and convincing evidence the state court's factual finding that Randy Brown's testimony was not derivative of Williams's confession. See 28 U.S.C. § 2254(e)(1).

In light of Brown's testimony, any error in admitting the identification of Williams's car as that used during the shooting was harmless. See Brecht v. Abrahamson, 507 U.S. 619, 637 (1993).

Thus, Williams cannot show that any ineffective assistance by defense counsel Schaaf caused him prejudice. See Strickland v. Washington, 466 U.S. 668, 687 (1984).

An evidentiary hearing was unnecessary. See § 2254(e)(2).

AFFIRMED.

**** The Honorable William W Schwarzer, Senior United States District Judge for the Northern District of California, sitting by designation.